

Enrolled Senate Bill 383

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CHAPTER

AN ACT

Relating to pleading requirements for actions against design professionals; creating new provisions; and amending ORS 31.300.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 31.300 is amended to read:

31.300. (1) As used in this section, “[*construction*] design professional” means an architect, [*registered*] landscape architect, professional engineer or professional land surveyor **registered under ORS chapter 671 or 672 or licensed to practice as an architect, landscape architect, professional engineer or professional land surveyor in another state.**

(2) A complaint, cross-claim, counterclaim or third-party complaint asserting a claim against a [*construction*] design professional that arises out of the provision of services within the course and scope of the activities for which the person is **registered or licensed** may not be filed unless the claimant’s attorney certifies that the attorney has consulted a [*licensed construction*] design professional **with similar credentials** who is qualified, available and willing to testify to admissible facts and opinions sufficient to create a question of fact as to the liability of the [*construction*] design professional. [*The certification required by this section must be filed with or be made part of the original complaint, cross-claim, counterclaim or third-party complaint.*] The certification must contain a statement that a [*licensed construction*] design professional **with similar credentials** who is qualified to testify as to the standard of **professional skill and care** applicable to the alleged facts, is available and willing to testify that:

(a) The alleged conduct of the [*construction*] design professional failed to meet the standard of professional [*care applicable to the construction design professional in the circumstances alleged*] **skill and care ordinarily provided by other design professionals with similar credentials, experience and expertise and practicing under the same or similar circumstances;** and

(b) The alleged conduct was a cause of the claimed damages, losses or other harm.

(3) In lieu of providing the certification described in subsection (2) of this section, the claimant’s attorney may file with the court at the time of filing a complaint, cross-claim, counterclaim or third-party complaint an affidavit that states:

(a) The applicable statute of limitations is about to expire;

(b) The certification required under subsection (2) of this section will be filed within 30 days after filing the complaint, cross-claim, counterclaim or third-party complaint or such longer time as the court may allow for good cause shown; and

(c) The attorney has made such inquiry as is reasonable under the circumstances and has made a good faith attempt to consult with at least one [licensed construction] **registered or licensed** design professional who is qualified to testify as to the standard of **professional skill and care** applicable to the alleged facts, as required by subsection (2) of this section.

(4) Upon motion of the [construction] design professional, the court shall enter judgment dismissing any complaint, cross-claim, counterclaim or third-party complaint against any [construction] design professional that fails to comply with the requirements of this section.

(5) This section applies only to a complaint, cross-claim, counterclaim or third-party complaint against a [construction] design professional by any plaintiff who:

(a) Is a [construction] design professional, contractor, subcontractor or other person providing labor, materials or services for the real property improvement that is the subject of the claim;

(b) Is the owner, lessor, lessee, renter or occupier of the real property improvement that is the subject of the claim;

(c) Is involved in the operation or management of the real property improvement that is the subject of the claim;

(d) Has contracted with or otherwise employed the [construction] design professional; or

(e) Is a person for whose benefit the [construction] design professional performed services.

SECTION 2. The amendments to ORS 31.300 by section 1 of this 2015 Act apply only to complaints, cross-claims, counterclaims and third-party complaints filed on or after the effective date of this 2015 Act.

Passed by Senate March 18, 2015

Received by Governor:

Repassed by Senate June 17, 2015

.....M.,....., 2015

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2015

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House June 11, 2015

Filed in Office of Secretary of State:

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Tina Kotek, Speaker of House

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State